

MINIMIZING UI COSTS

A Guide For The Employer

Under the Unemployment Insurance Code, the cost of providing unemployment insurance benefits is borne entirely by employers, who either pay a quarterly tax contribution on wages paid or reimburse the Unemployment Fund for their share of the cost of benefits paid to former employees.

Regular, for profit, employers who pay more than \$100 wages in any calendar quarter to one or more employees, pay a quarterly tax contribution on each employee's wages.

Public sector employers, schools, government entities and nonprofit organizations may elect to pay the tax contributions required of regular employers or to reimburse the Unemployment Fund for the actual benefits paid.

This pamphlet is intended to provide employers with information that can be of assistance in their efforts to reduce their unemployment insurance costs. The pamphlet is for general information only and does not have the force and effect of law, rule or regulation.

TO KEEP YOUR UNEMPLOYMENT INSURANCE TAXES DOWN

1. Keep good employment records and give warnings.
2. Conduct exit interviews.
3. Permit leaves of absence when possible.
4. Keep turnover to a minimum.
5. **PROMPTLY ANSWER CLAIM NOTICES ACCURATELY AND IN DETAIL.**

Send any eligibility information acquired at a later date to the EDD office in which the claim was filed.

6. Provide detailed responses to the EDD interviewer's questions.
7. If you believe that a decision is contrary to law or fact, appeal it.
8. Bring witnesses with first-hand knowledge of pertinent factors to the hearing.

VOLUNTARY LEAVING OF EMPLOYMENT

A voluntary leaving of work is not disqualifying when the employee had "good cause" for doing so. "Good cause" is the issue principally considered by the Employment Development Department in determining whether or not a claimant is eligible for benefits. While the term is not defined in the Code, the Appeals Board has held, "If the facts disclose a real, substantial, and compelling reason for leaving employment of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action, then there is good cause for such leaving"

The reason for resigning does not have to be one arising out of the work itself, or involving the employer. Personal reasons may suffice if they are of sufficiently compelling nature to meet the above test.

Generally considered to be quits with a good cause:

- To accept permanent employment at a substantially higher wage (more than 10% is considered "substantially higher").
- Leaving temporary or part-time work for full-time employment.
- Excessive travel time to work.
- Where the work constitutes a risk to health or safety.
- Where an individual has been the victim of an unprovoked annoyance or physical attack by fellow workers, or on account of unduly abusive or profane criticism from supervision.
- Religious conviction (based on tenets or dogma of some church, sect, or denomination).
- Sexual harassment, submission to which is a condition of hire or used as the basis for an employment decision, or which creates an intimidating, hostile, or offensive working environment.

Generally considered to be quits without good cause:

- To look for other work.
- To attend school.
- To become self-employed.
- Leaving prior to the effective date of a discharge.
- Leaving in anticipation of a discharge.
- Failure to request leave of absence, or to return to work after expiration of leave of absence or failing to request an extension.
- Unauthorized vacation or leave.

DISCHARGE FOR MISCONDUCT

While not defined in the Code, the Appeals Board has held "misconduct" to be conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee, or negligence or carelessness of such degree or recurrence as to show an intentional and substantial disregard of the employer's interests, or of the employee's duties and obligations to his employer. Misconduct does not necessarily imply an evil or corrupt motive or an actual intent to injure or damage the employer's interests. It is sufficient if the employee should have known that such conduct would result in his/her discharge.

It is important to note that the "misconduct" must be connected with the work. Thus, improper or unlawful acts by an employee during nonworking hours and away from company normally would not constitute misconduct.

Other conduct, even though not so serious as the acts mentioned above, can also amount to misconduct. Violation of a company rule, with knowledge of the rule, will generally constitute misconduct. Of course, the rule must not be unreasonable or unlawful. Thus, the employee who is frequently absent without report or makes unauthorized telephone calls may be guilty of misconduct. Likewise, poor attendance, unsatisfactory job performance, etc., may amount to misconduct if it was within the employee's power to meet the requirements of the employer but he/she willfully or negligently failed to do so.

Generally considered to be "misconduct":

- Theft of company property or property of other employees.
- Willfully or negligently damaging company equipment.
- Falsifying expense vouchers.
- Drinking on the job.
- Engaging in altercations with supervisors or other employees.

Generally not considered to be "misconduct":

- Mere inefficiency.
- Failure to meet performance standards as the result of inability or incapacity.
- Inadvertencies or ordinary negligence in isolated instances.
- Good faith errors in judgment or discretion.

TRADE DISPUTE REQUIREMENTS

An individual is not eligible for unemployment insurance if he/she left his/her work because of a trade dispute and for the period during which he/she continues out of work because the trade dispute is still in active progress.

Because the Employment Development Department must decide whether a claimant is eligible to receive benefits in a trade dispute situation, certain facts are needed.

Regulations require employers involved in a trade dispute to respond to a form sent to them, which asks:

1. Name and address of employing unit;
2. Each employee's full name, SSA number and date he/she left his/her work due to the trade dispute,
3. A statement that a trade dispute exists,
4. Name and address of the union, or unions, claiming to represent the employees listed; and
5. Such other information as may be prescribed.

This information is used to identify each claimant who may have left his/her work because of a trade dispute. After also obtaining information from unions, individuals, and other sources, and examination of all available facts, a decision will be issued.

ANNUAL AUDIT OF DE 428, STATEMENT OF CHARGES

Employers who pay by the tax-rated method are notified once yearly by DE 428 of charges to their reserve account (usually during the month of November). An employer has 60 days to protest any item shown on the statement. A protest must be in writing and should include the claimant's name, social security account number, date of claim, amount of charge, employer's name and account number and reason for protest. In reviewing the DE 428 consider the following:

1. Favorable ruling issued, but benefits charged to account. This can be caused by:
 - a. Incorrect social security account number on ruling.
 - b. Incorrect date of claim on ruling.
 - c. Incorrect termination date on ruling.
 - d. Incorrect employer account number on ruling.
 - e. Ruling issued after cut-off for processing, usually the first week of August each year.

2. Favorable decision by Administrative Law Judge or Appeals Board.
3. Failure of Field Office to issue a Notice of Modification of Determination, DE 1080M, after lifting an indefinite disqualification.
4. Benefit payments charged for a claimant never employed by the company.
5. Determine that credit adjustments resulting from preceding year charge protest appear. They may appear on first or second mailing of statements.

NOTE: A minus sign (-) behind an amount means this amount, previously charged, has now been canceled and is added back to the employer's reserve account.

The above information is not applicable to employers who have elected the reimbursable method of financing their unemployment insurance cost. Though entitled to a Notice of Determination in response to submission of timely eligibility information, they are not issued a Notice of Ruling since they have no reserve accounts. A ruling would have no effect, as the reimbursable employer is liable for their proportionate share of any benefits paid.

WRITTEN PROTEST MUST BE FILED BY

10 Days:

1. Notice of Claim Filed, DE 1101, DE 3422.
2. Notice of Potential Employer False Statement Liability, DE 3802.
3. Discovery of information that may effect an employee's eligibility for UI benefits.

15 Days:

Notice of Computation of Benefits, DE 1545.

20 Days:

1. Appeal to a Notice of Determination/Ruling, DE 1080.
2. Written Decision of Administrative Law Judge.
3. Notice of Denial or Cancellation of Ruling or Determination, DE 4614.

30 Days:

Notice of Determination and /or Assessment on Employer False Statement, DE 3807.

A timely written response should be made to the first claim notice with any facts then known which may affect the claimant's eligibility for benefits.

**INFORMATION UPON WHICH EMPLOYMENT DEVELOPMENT
DEPARTMENT RELIES FOR RULING AND DETERMINATION DECISIONS
ON UNEMPLOYMENT INSURANCE CLAIMS**

In most cases of separation, for reasons other than completion of the contract of hire or layoff for lack of work, the following data is needed:

1. Employee's name, title and service dates.
2. Wages (include differential), work location by address, tour or scheduled hours.
3. Effective date of resignation or discharge.
4. Pay in-lieu-of notice; period of time covered, and dollar amount.
5. If available, a copy of signed resignation or formal recommendation for discharge.

The following are based on questions the Department asks the employer and the claimant in making a ruling or determination relative to reasons for resignation or discharge. A claimant or employer making a false statement, regarding factors affecting the claimant's eligibility, is subject to penalties.

**REASON FOR SEVERANCE OF EMPLOYER-EMPLOYEE RELATIONSHIP
AND SAMPLE QUESTIONS.**

1. Termination because of child care.
 - A. Is employee staying home to care for children because of preference? Necessity?
 - B. What effort has employee made to secure adequate child care? How much effort put forth?
 - C. Was a leave of absence requested? Suggested? Discussed? Denied? Refused by employee? Why?
 - D. What was previous child care arrangement? For how long? What happened to terminate it?
2. Resigned because of transportation.
 - A. How long had employee been commuting to work?
 - B. Length of time required to commute? Distance? How traveled?
 - C. How long had these facilities been used?
 - D. What brought about the inability to continue commuting as before?
 - E. Was this means of transportation used and relied upon at time the job was accepted?

- F. What effort has been made to obtain other transportation? Ride pools? Advertising? Bulletin board?
 - G. Did employee live at present address at time of employment?
 - H. Did the employee move away from the area of work? Why? How long ago did he/she move?
 - I. Was a transfer to a work location closer to his/her home requested? Suggested? Offered? When? Denied? Why?
 - J. What is the normal commuting pattern for the employees of this company? Of other companies in the area?
3. Resigned to get married.
- A. When will marriage take place? Where?
 - B. When will employee move from area? Where?
 - C. Was transfer or leave of absence requested? Suggested? Discussed? Denied? Refused by employee? Why?
 - D. Will employee work after marriage?
 - E. Refer to Item 6 below for additional questions.
4. Resigned because of working hours.
- A. What hours was employee scheduled?
 - B. Why were hours scheduled disagreeable?
 - C. Did employee select own hours?
 - D. Did employee restrict hours or days at time of application for work?
 - E. Was a change in hours requested? Suggested? Discussed? Denied? Available? Refused by employee? Why?
5. Resigned because of illness or death in family.
- A. Who was ill in family? Nature of illness?
 - B. How much time will be required in caring for ill person?
 - C. How long has present condition existed?
 - D. Why must employee take responsibility?

- E. When does employee anticipate returning to the labor market?
 - F. Was a leave of absence requested? Suggested? Discussed? Denied? Refused by employee? Why?
6. Resigned to join spouse.
- A. Has spouse established a permanent domicile elsewhere? Where?
 - B. Is spouse employed at new location? Is job permanent? Starting date?
 - C. Is spouse temporarily transferred? For how long? What living arrangements have been made?
 - D. Does employee plan to seek work?
 - E. Was a transfer or leave of absence requested? Suggested? Discussed? Denied? Refused by employee? Why?
7. Resigned for personal reasons.
- A. Personal reasons? Details?
 - B. Is resignation the only solution?
 - C. Was leave of absence or transfer requested? Suggested? Denied? Refused by employee? Why?
8. Resigned because of company's refusal to grant leave of absence.
- A. What was reason for request?
 - B. Why was leave necessary?
 - C. Why was leave denied?
9. Resigned to go to school.
- A. Name of school? Location?
 - B. When will he/she start? Full or part time? Hours?
 - C. Does he/she anticipate working part time?
 - D. Was part-time work, leave of absence or change of hours requested? Suggested? Discussed? Denied? Refused by employee? Why?

10. Resigned to stay home.

A. Matter of preference? Necessity? Why?

B. Domestic duties? What?

11. Resigned to accept other employment.

A. What prospects does employee have for other work?

B. With whom?

C. What wages?

D. When starting?

E. When applied for other job?

F. Why was employee seeking other work?

12. Resigned because of job dissatisfaction.

A. Lack of interest in job? Why?

B. Had sufficient training or instruction been received? Did employee think so?

C. Had prior promises made to employee been kept/broken?

13. Resigned because of personal business venture.

A. Is it a permanent thing?

B. Leave of absence aspects?

C. Nature of business?

14. Termination because of incarceration.

A. What was the nature of offense?

B. When incarcerated? For how long? Where?

C. Terminated due to absence while incarcerated or because of the act causing incarceration?

15. Resigned to enter military service.

A. Was he/she drafted, an enlistee or a reserve callback, or did he/she anticipate a call to duty?

B. Does order instruct employee to report for physical exam or for induction?

C. Date induction - Where? For how long?

16. Resigned because of union reasons.

A. What were they?

B. What were employee's responsibilities?

C. Did employee know of union requirements prior to taking the job?

17. Reason for resignation unknown. (Job abandonment)

A. Background details that may have motivated abandonment.

B. Is address known where a letter of inquiry can be sent?

C. Was letter sent? Response received?

18. Retirement.

A. Requested by employee? Why? Suggested by company?

B. Eligible for pension? If so, was a lump sum payment made? Are monthly or other periodic payments being made? Amount? Was pension financed by employer contributions?

19. Employee laid off.

A. Lack of work? Details?

B. Temporary employee? Period of specific work?

C. Other type of work requested?

D. Other type of work offered?

E. Transfer requested or discussed?

20. Employee discharged.

A complete detailed record of circumstances surrounding a discharge is necessary.

Reason for discharge:

A. If dishonest or violation of rule be specific. What? Where? When? How? Did employee know rule or that act was dishonest? When was he/she made aware of it? By whom? Had it happened before? When? Was employee reprimanded? Warned? When? How often? How severely? A general warning or a final warning?

- B. Because of attendance or punctuality. Set forth specific attendance record and pattern. Was employee warned? (Severity - general or final?) What was the cause of the problem? Was help suggested? Was it in employee's power to reasonably control poor attendance? How? What efforts were made?
- C. Other reasons - be specific.
- D. Did employee or union grieve discharge?
- E. Was termination allowance recommended? Approved? Amount?

21. Dissatisfaction with:

- A. Rate of pay -Did he/she have a better job lined up? If so, see Item 11.
- B. Supervision -What were his/her complaints?
- C. Job assignment, coworkers. etc. -Did he/she tell his/her supervisor? coworkers. etc. Did supervisor take any action to satisfy the complaint? Did he/she request a transfer?
- D. Future of job-Was he/she subject to layoff at a definite future time? Has he/she been told this or was it his/her speculation? Did he/she have another job?
- E. Living or working conditions, housing, climate, etc.-Was it a matter of personal preference or was there a serious effect on health and welfare?
- F. Transportation -Nature of the problem. What effort was made to alleviate it?

22. Layoff

Was other job offered? If so, state occupation, rate of pay and shift. Reason for rejection, if known, so state. Did employee accept offer, then change mind? Did he/she try other job, then decide to reject?

23. Dismissal or voluntary quit in lieu of dismissal for violation of rule, insubordination, falsification of documents, substandard attendance, etc.

Full statement of facts, especially the act which brought about the decision to dismiss and when it occurred. Applies to probationary employees as well. What excuse was given by employee for his/her action.